IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1021

EMPLOYEES OF THE DEPARTMENT OF PUBLIC HEALTH & WELFARE, STATE OF MISSOURI, ET AL., *Petitioners*,

v.

DEPARTMENT OF PUBLIC HEALTH & WELFARE, STATE OF MISSOURI, ET AL., *Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

Docket 1458

EMPLOYEES OF THE DEPARTMENT OF PUBLIC HEALTH & WELFARE, STATE OF MISSOURI, ET AL.,
Plaintiffs,

v.

DEPARTMENT OF PUBLIC HEALTH & WELFARE OF THE STATE OF MISSOURI, ET AL.,
Defendants.

Docket Entries

Date	Proceedings
1969	
Aug. 4	Complaint—filed.
Aug. 27	Defendant's motion for additional time to answer and plead—filed.
Aug. 27	Order—filed. (Defendant given an additional 30 days to file answer or such other pleadings.) Copies mailed to parties.
Sept. 29	Motion to dismiss (by defendants)—filed. Suggestions in support of motion to dismiss—filed.
Oct. 23	Defendants' answers to questionnaire—filed.
1970	
Jan. 27	Order granting defendants' motion to dismiss; and Judgment of Dismissal—filed. (Ordered that defendants' Motion to Dismiss be, and it is hereby, granted. It is further Ordered and Adjudged that this cause be, and it is hereby, dismissed.) Copies mailed to parties.
Feb. 20	Notice of Appeal—filed. (Copies mailed to parties.)
Feb. 26	Bond for Costs on Appeal—filed.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

[Title omitted in printing.]

Complaint

(Filed in U. S. District Court August 4, 1969)

Comes now the plaintiffs in the above matter and for their cause of action against the defendants state:

1. This action is brought to recover from the defendants unpaid overtime compensation, and an additional equal amount as liquidated damages, and reasonable counsel fees, under the provisions of the Act of June 25, 1938, c. 676, 52 Stat. 1069, as amended by Pub. L. 89-601; 80 Stat. 830-832, 837; Title 29, U. S. C., Secs. 201-219 (as amended, Pocket Part, 1969), known as the Fair Labor Standards Act, a law of the United States regulating interstate commerce. Jurisdiction is conferred on this Court by Title 28, U. S. C., Sec. 1337.

2. Defendant Department of Public Health and Welfare is an agency of the State of Missouri, defendants Division of Mental Disease and Division of Health of the State of Missouri are Divisions of the said Department of Public Health and Welfare. Defendant Austin Hill is the Director of the Department of Public Health and Welfare, defendant George A. Ulett, M.D., is the Director of the Division of Mental Disease, defendant L. M. Garner, M.D., is the Acting Director of the Division of Health. These defendants are charged under the law with the power and authority to establish, maintain and control a system of public hospitals within the State of Missouri and pursuant to said power have operated and maintained hospitals in the State of Missouri consisting of, among others; State Hospital No. 1, Fulton, Missouri; State Hospital No. 2, St. Joseph, Missouri; State Hospital No. 3, Nevada, Missouri; State Hospital No. 4, Farmington, Missouri, and

Malcolm Bliss Hospital, St. Louis, Missouri. These defendants operated such hospitals on February 1, 1967 and continue to operate said hospitals to and including the time of the filing of this complaint and said Hospitals are Hospitals within the meaning of Section 203 of the Fair Labor Standards Act as amended on September 23, 1966, Pub. L. 89-601, effective February 1, 1967.

3. Defendant State Board of Training Schools is a Division of the Department of Corrections of the State of Missouri and exists by reasons of Article 4, Sec. 38 of the Constitution of the State of Missouri and has exclusive supervision of the Training School for Girls at Chillicothe, Missouri. Defendant W. E. Sears is Director of the Division of Training Schools and defendants Oren J. Lamb, James L. Coffman, John J. Gillis, James E. Conway, Mrs. Juanita Evans, and Ellis F. Rucker are members of the State Board of Training Schools. These defendants are charged with the power and authority to establish, maintain and control a system of Training Schools within the State of Missouri and pursuant to such power have operated the Training School for Girls, Chillicothe, Missouri. Defendants were operating said educational institution on February 1, 1967 and continue to operate said institution up to and including the time of the filing of this complaint and said Training School is formally and legally an educational institution and school within the meaning of Sec. 203 of the Fair Labor Standards Act as amended on September 23, 1966 by Pub. L. 89-601, effective February 1, 1967.

4. That defendants Austin Hill, George A. Ulett, L. M. Garner, W. E. Sears, Ellis F. Rucker, Oren J. Lamb, James L. Coffman, John J. Gillis, James E. Conway, and Mrs. Juanita Evans are sued both individually and in their official capacities as set forth herein.

5. The plaintiffs are now and at all times pertinent hereto, have been members of the American Federation of

State, County and Municipal Employees' Union, AFL-CIO, affiliated with Missouri State Council 72 of said Union. Said Missouri State Council 72 is now and at all times pertinent hereto, an unincorporated voluntary association, to-wit: a labor organization engaged in representing employees of various departments of the State of Missouri in regard to their wages, hours and working conditions.

6. That the plaintiffs in Group I are employees of the Department of Public Health and Welfare of the State of Missouri and those employees listed as in Group I (A) are employed by the Division of Mental Diseases at the Institutions listed in the caption. That plaintiffs listed in Group I (B) are employees of the Division of Health working at the Ellis Fischel Cancer Hospital in Columbia, Missouri. That plaintiffs listed in Group II of the caption of this pleading are employees of the Division of Training Schools working at the Training School for Girls, Chillicothe, Missouri. That the enterprises and institutions named herein are engaged in the operation of said Schools and Hospitals and plaintiffs bring this action for themselves and for the benefit of other employees similarly situated, such employees constituting a class, the members of which are so numerous as to make it impractical to bring them all before the Court. Plaintiffs represent that they are competent to represent the interest of said class.

7. That plaintiffs named herein and all the other employees of the Division of Mental Diseases, the Division of Health, and the Training School for Girls, Chillicothe, Missouri for whose benefit and in whose behalf this action is brought are now and since the 1st day of February, 1967 have been employees within the meaning of the Fair Labor Standards Act, 29 U.S.C., Sec. 203 (e).

8. The plaintiffs and all the other employees of the enterprises engaged in the operation of said School and Hospitals for whose benefit and in whose behalf this action is brought are entitled to the benefits of the maximum

hours provision of the Fair Labor Act, 29 U.S.C., Sec. 207 (a) (2), which provides *inter alia* as follows:

> No employer shall employ any of his employees . . . for a workweek longer than 44 hours during the first year from the effective date of the Fair Labor Standards amendments of 1966 [February 1, 1967 to and including January 31, 1968], for a workweek longer than 42 hours during the second year from such date [February 1, 1968 to and including January 31, 1968], or for a workweek longer than 40 hours after the expiration of the second year from such date [February 1, 1969, ad finitum], unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

9. Since the 1st day of February, 1967, to and including the 31st day of January, 1968, the plaintiffs and all the other employees for whose benefit and whose behalf this action is brought were required to work and did work in excess of 44 hours per week.

10. Since the 1st day of February, 1968, to and including the 31st day of January, 1969, the plaintiffs and all of the other employees for whose benefit and whose behalf this action is brought were required to work and did work in excess of 42 hours per week.

11. Since the 1st day of February, 1969, to and including the 1st day of August, 1969, the plaintiffs and all the other employees for whose benefit and in whose behalf this action is brought were required to work and did work in excess of 40 hours per week.

12. Since the 1st day of February, 1967, and continuing to the present date, the plaintiffs have demanded and continued to demand that they be compensated at a rate not less than one and one-half times the regular rate at which they are employed for the hours they were required to work in excess of 44 hours per week for the period of February 1, 1967, to and including January 31, 1968.

13. Since the 1st day of February, 1968, and continuing to the present date, the plaintiffs have demanded and continued to demand that they be compensated at a rate not less than one and one-half times the regular rate at which they are employed for the hours they were required to work in excess of 42 hours per week for the period February 1, 1968 to and including January 31, 1969.

14. Since the 1st day of February, 1969, and continuing to the present date, the plaintiffs have demanded and continued to demand that they be compensated at a rate not less than one and one-half times the regular rate at which they are employed for the hours they were required to work in excess of 40 hours per week for the period February 1, 1969, to and including August 1, 1969.

15. By reason of the defendants' refusal to comply with the maximum hours provisions of the Fair Labor Standards Act and to compensate the plaintiffs at one and one-half times the regular rate at which they are employed for all hours they were required to work in excess of 44 hours per week for the period of February 1, 1967, to and including January 31, 1968 and for the hours they were required to work in excess of 42 hours per week for the period of February 1, 1968, to and including January 31, 1969, and for the hours they were required to work in excess of 40 hours per week for the period of February 1, 1969 to and including August 1, 1969 as set forth above, the plaintiffs and all of the other employees for whose benefit and whose behalf this action is brought have been injured in the amount of the overtime wages they should have received if not for the defendants' wilful violations of the maximum hours provisions of the Fair Labor Standards Act.

16. In addition to the amounts of unpaid overtime compensation due from defendants to plaintiffs, plaintiffs also claim additional amount equal to the sums due them respectively, as liquidated damages, as provided by Title 29, Sec. 216 (b).

17. By reason of the defendants' wilful and unjustified refusal to pay the overtime due these plaintiffs it has been necessary for them to employ attorneys to prosecute this cause for them and in accordance with Sec. 216 (b), request is therefore and hereby made for reasonable attorney fees, interest, and cost of this action to be assessed against defendants.

18. In compliance with the requirement of Title 29, U.S.C., Sec. 216 (b), there are attached hereto authorizations signed by the plaintiffs, which constitute consents in writing to becoming a party to a suit under said section.

Wherefore, the plaintiffs severally demand judgment for themselves and for all other employees similarly situated for whose benefit and whose behalf this action is brought, for all sums which may be found to be due to each of them for unpaid overtime compensation, and for an additional equal amount as liquidated damages, and for reasonable attorney fees, interest, and the cost of this action.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

(Title omitted in printing)

Motion To Dismiss

(Filed in U. S. District Court September 29, 1969)

Comes now the State of Missouri by John C. Danforth, Attorney General of Missouri, solely for the purpose of contesting the jurisdiction of this Court and the defendants named herein and under Rule 12 (b) of the Federal Rules

of Civil Procedure respectfully moves the Court to dismiss this action for the following reasons:

1. The State of Missouri is an indispensable party who must be joined in this action under Rule 19 and whose presence will deprive the Court of jurisdiction in this action.

2. The Court is without jurisdiction to entertain this action because it is in substance and affect against the State of Missouri which has not consented to be sued or waived its immunity from suit and, therefore, this action is proscribed by the Eleventh Amendment of the Constitution of the United States.

3. The complaint fails to state a claim upon which relief can be granted because the relief sought is in fact against the State of Missouri and the named defendants are but nominal parties. The action is designed to reach funds of the State of Missouri as well as control the affirmative official action of the State and its agencies in its political capacity.

Wherefore, the defendant for the foregoing reasons prays that the complaint be dismissed and for such other and further relief as to the Court seems proper in the premises.

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Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

Docket 1458

EMPLOYEES OF THE DEPARTMENT OF PUBLIC HEALTH & WELFARE, STATE OF MISSOURI, ET AL., *Plaintiffs*,

v.

DEPARTMENT OF PUBLIC HEALTH & WELFARE OF THE STATE OF MISSOURI, ET AL., *Defendants*.

Order Granting Defendants' Motion To Dismiss: Judgment of Dismissal

(Filed in U. S. District Court January 27, 1970)

This is a suit under the Fair Labor Standards Act, Sections 201-219 of Title 29, United State Code. The plaintiffs state that they are employees of the defendant within the meaning of Section 203(e) of the same title who have worked more than 44 hours a week during the period of February 1, 1967, to January 31, 1968; more than 42 hours during the period of February 1, 1968, to January 31, 1969; and more than 42 hours during the period February 1, 1969; and they accordingly sue for time-and-a-half overtime pay in accordance with § 207(a)(2) of the above title, which overtime pay they state they have continually demanded of defendants, who have failed and refused to pay it. Plaintiffs also request an additional equal amount in liquidated damages.

The federal and state courts have consistently held that actions of this nature against an official or agency of the state in his official capacity are actions against the state itself. *Ford Motor Company* v. *Department of Treasury of the State of Indiana*, 323 U. S. 459, 65 S. Ct. 347, 89 L. Ed. 389; *Klekan* v. *Morris*, Mo., 247 S. W. 2d 832; *State ex rel. State Park Board* v. *Tate*, Mo. en banc, 295 S. W. 2d 167; *State ex rel. Eagleton* v. *Hall*, Mo. en banc, 389 S. W. 2d

798. The principle thus recognized is that of sovereign immunity, in accordance with the Eleventh Amendment to the United States Constitution.

In *Maryland* v. *Wirtz*, 292 U. S. 183, 88 S. Ct. 2017, 20 L. Ed. 2d 1020, the United States Supreme Court held that the Fair Labor Standards Act applied to state governments in certain circumstances, but specifically declined to determine whether a suit by an employer of the state against the state government under Section 216(b) was permissible in light of the Eleventh Amendment's recognition of the principle of sovereign immunity.

The question specifically reserved in that case, however, has recently been decided in favor of the principle of sovereign immunity by the United States District Court for the District of Utah in the case of *Briggs* v. *Sagers* (D. Utah) — F. Supp. — (decided July 11, 1969). In that case, as in this one, state welfare department employees sued for overtime compensation.

There is no question of waiver of immunity under the pleadings in this case. Cf. *Parden* v. *Terminal Ry. Co.*, 377 U. S. 184, 84 S. Ct. 1207, 12 L. Ed. 2d 233.

For the foregoing reasons, it is

Ordered that defendants' motion to dismiss be, and it is hereby, granted. It is further

Ordered and Adjudged that this cause be, and it is hereby, dismissed.

WILLIAM H. BECKER
Chief Judge

Kansas City, Missouri
Date: .....

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED